

**CITY OF MORGAN HILL
REGULAR CITY COUNCIL
AND REGULAR REDEVELOPMENT AGENCY MEETING
MINUTES – AUGUST 23, 2006**

CALL TO ORDER

Mayor/Chairman Kennedy called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Absent: Mayor Pro Tempore/Vice-chair Grzan

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

The recognition of Animal Control Officer Daniel Pina was deferred to a future meeting.

CITY COUNCIL REPORT

Council Member Sellers reported the following: 1) He was recently appointed to a Caltrain subcommittee and that the subcommittee will be meeting at the end of the month. He said that this is an important opportunity for the City to become involved to ensure Morgan Hill's interests and needs are represented in terms of transportation issues, in the broadest sense; and to extend the activity of Mayor Kennedy's efforts serving as the Valley Transportation Authority Board chair. 2) He indicated that at the last Council meeting, the Council approved the placement of a measure on the November 7, 2006 ballot. In the intervening weeks, since its last meeting, the Council drafted ballot arguments and rebuttals. He indicated that the ballot measure received unanimous support of the Council and that it will be debated this fall. He stated that it would behoove everyone who is planning to vote in November to pay attention to the issue as it is the Council's belief the ballot measure would fundamentally transform and improve the downtown area. 3) He had the opportunity to drive his son to school this morning, indicating that the drive took an extended period of time as individuals are getting used to new routes; especially since Sobrato has increased its enrollment to 1,500 students and is now a four-year school. He recommended that everyone keep in mind the safety of children at every school, and that individuals be cautious and drive slower. 4) He acknowledged the centennial banner commemorating the City's centennial. He noted that a centennial celebration was held since the last Council meeting and stated his appreciation to all individuals active in this effort. 5) He further acknowledged the display of a new City flag.

CITY MANAGER REPORT

City Manager Tewes indicated that the Wall Street Journal contained an article about security systems for on line banking. They used an example on how banks are now asking for private information such as identification of a high school mascot. The article indicated that an individual incorrectly stated their high school mascot to be the “mighty mighty Acorns.” This individual got locked out of their bank account because they forgot the mascot was simply the “Acorns.” He stated that the article did not identify which high school it was, but felt it to be the Live Oak High School mascot; receiving national publicity.

City Manager Tewes informed the Council that staff will be requesting that Item 1 be pulled from the Consent Calendar for a separate discussion. He indicated that Item 1 is normally a routine item where staff files with the Council the City’s monthly financial information. However, this month’s report is for the month ending the fiscal year (June 30, 2006). He indicated that there is good news despite staff’s forecast of four months ago, that the City would end the year with an operating deficit. He reported the City ended the fiscal year with a slight operating surplus. He indicated that this is good news for the community and good news of the City’s financial condition. He stated that Finance Director Dilles will be presenting the Council and the community with more information on why the operating surplus occurred; explaining that this is largely attributable to unanticipated revenues and savings greater than anticipated. He said that staff will take the new information on how the City ended the year and address how this new information will forecast the City’s future finances. He indicated that this information does not suggest the City is flush with resources. He said the City is still in a position of having the lowest level of spending per capita of comparable cities in the County. He noted the Council has asked that over the course of the next year, the City engage in further community conversations in order to find out the appropriate level of service desired by citizens and customers.

CITY ATTORNEY REPORT

City Attorney Kern reported that the City has settlement two items the Council considered in closed sessions a few months ago: 1) General Lighting Service vs. Wells Construction and the City of Morgan Hill. She indicated the City considered this item in closed session on April 5, 2006. This case pertains to the Morgan Hill Police facility where there was a construction claim. A suit was brought in September 2004. The City cross claimed against Wells Construction, the contractor. The City was able to retain \$308,000. Wells demanded \$750,000 from the City pursuant to its claim. She indicated the City settled by paying only \$225,000. In addition, the seller of the property where the Morgan Hill Police facility is located, wanted \$136,000 in rent because of the delay to acquire the property. She stated that this case was settled for \$43,000. 2) The In re Hemming case was considered in closed session in March 2006. The Council authorized the City attempt to settle the matter relating to a below market rate house in bankruptcy due to being over encumbered. There was a mortgage and a face value of \$210,000. The City was able to settle for \$160,000. She indicated that the City has now closed and acquired the property, and is preparing to make the BMR home available to another homeowner.

OTHER REPORTS

City Treasurer Roorda presented the City Treasurer's Quarterly Report. He stated that the Council worked on a five-year projection; indicating that this was the year expected to be one of the most difficult and largest deficit year the City would be facing. He acknowledged the City had an excellent amount of reserves. Despite the fact the City was facing a deficit, the City was able to weather the storm and that this was attributed to the City's reserves. He indicated that revenues came in stronger the second half of the year and the deficit was reduced even further in terms of projections. He noted the City ended the fiscal year with a break even with a small surplus. He addressed revenues and expenditures, noting that revenues exceeded expenses for the first time in several years. Revenues were above budget by approximately 8% with a growth over last year of 15%. He acknowledged that there was some growth in expenses, but that these came in below the budget guidelines. He indicated that the general fund balance is at \$10 million. He said the City has come through a difficult period of budget deficits, but that this has not dramatically impacted the City's reserves and the ability to weather future storms. Increase in revenues were attributed to transportation sales tax, property taxes, and controlled expenses. Although it was projected this would be the toughest year, it ended up being the turn around year where the City was able to produce a surplus.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that Item 1 be removed from the Consent Calendar in order to allow the Finance Director to present a staff report, and item 6 as there was an individual in attendance requesting to address the Council.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Approved** Consent Calendar Items 2-5 and 7-21, as follows:*

2. **JULY 2006 FINANCE AND INVESTMENT REPORT**

Action: **Accepted** and **Filed** Report.

3. **SPECIAL CITY COUNCIL MEETING MINUTES FOR JULY 26, 2006**

Action: **Approved** as Submitted.

4. **CALTRAIN POLICY ADVISORY BOARD APPOINTMENT**

Action: **Confirmed** the Mayor's Appointment of Council Member Carr to the Caltrain Policy Advisory Board.

5. **RESIGNATION OF A SENIOR ADVISORY COMMISSIONER**
Action: 1) Accepted Staten Johnston's Resignation from the Senior Advisory Commission; and 2) Directed the City Clerk to Commence Recruitment Efforts to Fill the Vacancy.
7. **POLICY REGARDING TENTATIVE SUBDIVISION MAP APPROVAL PRIOR TO THE AWARD OF BUILDING ALLOCATIONS THROUGH THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM**
Action: Adopted Policy.
8. **NEW LIBRARY PROJECT – JULY CONSTRUCTION PROGRESS REPORT**
Action: Information Only.
9. **CENTENNIAL RECREATION CENTER PROJECT - JULY CONSTRUCTION PROGRESS REPORT**
Action: Information Only.
10. **RESPONSE TO SANTA CLARA COUNTY GRAND JURY REPORT "REDUCING LANGUAGE BARRIERS IN DOMESTIC VIOLENCE CALLS"**
Action: Directed Staff to Provide the Responses Described to the 2005-2006 Santa Clara County Grand Jury.
11. **AUTHORIZE CITY MANAGER TO EXECUTE SUPPLEMENTAL AGREEMENT FOR RECEIVING FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR 2006-2007 PAVEMENT RESURFACING PROJECT**
Action: Adopted Resolution No. 6047, Authorizing the City Manager to Execute Supplemental Agreement No. 008-M with the State Department of Transportation to Receive Federal Funding for the 2006-2007 Pavement Resurfacing Project.
12. **QUITCLAIM A PORTION OF DIANA AVENUE (APN 726-07-079)**
Action: 1) Authorized the City Manager to Execute the Quitclaim Deed Releasing the City's Interest in Apportion of Diana Avenue Previously Vacated by the City; and 2) Directed the City Clerk to File a Certified Copy of the Quitclaim Deed in the Office of the Recorder of Santa Clara County.
13. **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION STAKING FOR DEPOT STREET RECONSTRUCTION PROJECT**
Action: Authorized the City Manager to Execute a Consultant Agreement with BKF Engineers in the Amount of \$38,046 for Construction Staking for the Depot Street Reconstruction Project, Subject to Review and Approval by the City Attorney.

14. **AWARD PROFESSIONAL SERVICES CONTRACT FOR DESIGN OF MISSION VIEW WELL SITE PROJECT**
Action: Authorized the City Manager to Execute an Agreement with Luhdorff & Scalmanini for the Design of a Test Well and Preparation of Plans and Specifications for Mission View Well in the Amount of \$60,500; Subject to Review and Approval by the City Attorney.
15. **RESOLUTION FOR FUNDING FROM THE URBAN FORESTRY GRANT PROGRAM ENTITLED “GREEN TREES FOR THE GOLDEN STATE”**
Action: Approved Resolution No. 6048, Authorizing Public Works to File an Application for “Proposition 12” Tree Planting Grant Program Funds for the Purpose of Planting 100 Native Oak Trees in Morgan Hill Parks and Medians.
16. **CALIFORNIA CONSERVATION CORPS AGREEMENT FOR VEGETATION ABATEMENT IN STORM CHANNELS, MEDIANS, AND PARKS**
Action: Authorized the City Manager to Enter into an Agreement with the California Conservation Corps for Vegetation Abatement in Storm Channels, Medians, and Parks Throughout the City; Subject to Review and Approval by the City Attorney. The Term of the Agreement is for Fiscal Year 2006-2007 in the Amount of \$15,000.
17. **SECOND STREET WATER MAIN REPLACEMENT PROJECT**
Action: 1) Accepted as Complete the Second Street Water Main Replacement in the Final Amount of \$160,306.64; and 2) Directed the City Clerk to File the Notice of Completion with the Santa Clara County Recorder’s Office.
18. **PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY**
Action: Approved Payment in the Amount of \$49,729.42 for Vegetation Abatement for Fiscal Year 2005-2006.
19. **RESOLUTION AMENDING 2005 SPEED SURVEY**
Action: Adopted Resolution No. 6049, Amending Resolution No. 5944 which established Designated Speed Limits on City Streets.
20. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) 2006 QUARTERLY REPORT # 2**
Action: Accepted and Filed the RDSCS Second Quarter Report for 2006.
21. **ADOPT ORDINANCE NO. 1789, NEW SERIES**
*Action: Waived the Reading, and Adopted Ordinance No. 1789, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING TITLE 18, THE ZONING CODE UNDER CHAPTER 18.47, THE DENSITY BONUS AND INCENTIVES CHAPTER***

AND CHAPTER 18.55, THE SECONDARY DWELLING UNIT CHAPTER TO COMPLY WITH THE CALIFORNIA GOVERNMENT CODE (APPLICATION ZA-06-07).

1. JUNE 2006 FINAL FINANCE AND INVESTMENT REPORT

Finance Director Dilles indicated that he would be adding comments to what was stated by City Treasurer Roorda about the City's budget situation, how the City ended the year, where the City is projected to be financially in the general fund, and offer reasons why the City ended up in a different position than originally anticipated at the end of the year. He stated the City ended the fiscal year at \$10.2 million and that staff sees this amount increasing next year by approximately \$400,000. This amount would go up to \$14 million by the end of June 2011. He informed the Council that this projection is different to the information presented to the Council previously. He indicated that staff projects a \$400,000 deficit this fiscal year with approximately \$1 million in surpluses in the ensuing four years. He stated the Council has adopted a policy such that the general fund reserve balance should be at 25%, indicating that this percentage has dropped over recent years. However, it is now leveling off and trending upward slightly, given the better relationship between revenues and expenditures.

Finance Director Dilles indicated that during the budget hearings, staff projected that it anticipated a \$620,000 deficit for Fiscal Year 2005-06, but ended with a \$48,000 surplus. It was anticipated the City would end Fiscal Year 2006-07 with a \$645,000 deficit, but it is now anticipated the deficit would be \$395,000. What has changed is the fact that staff factored in the shrinkage of the Redevelopment Agency Area, when extended; adding \$700,000 a year in net revenue to the general fund beginning in Fiscal Year 2007-08 (anticipated). Some of the reasons the City went from a \$600,000 deficit to a \$48,000 surplus are as follows: property taxes have grown by \$320,000 over what was previously projected related to the vehicle license fee backfill; increase in sales taxes by \$170,000, particularly in the transportation area; unexpected early receipt of \$150,000 from the State to reimburse the City for mandated costs; and the savings of an additional \$87,000 in operating costs over and above what was expected to be spent last year. He stated that staff is concerned that the transportation segment would not continue to be what is being seen today. Therefore, in the five year projections the Council received this evening, staff has scaled down the future projections for sales taxes. Staff is projecting a 2¼% annual increase in sales taxes.

Mayor Kennedy indicated that the Santa Clara County Assessor made a presentation to the City Council recently about property taxes. He mentioned that Morgan Hill had the highest increase, percentage-wise, in property tax revenue. The County Assessor outlined where the property taxes goes (e.g., cities, state, schools, county and special districts). He inquired whether staff has any approximate percentages of where the property taxes go that could be presented to the Council.

Finance Director Dilles said that exclusive of a Redevelopment Agency, cities would receive 10%, and that schools, the County, the library system, and the Water District would receive a percentage of these taxes, but that he does not have the exact percentages at this time. However, he could provide the Council with the percentages the various agencies receive.

Mayor Kennedy said that it is surprising to know that only 10% of the property taxes goes to cities and would like to know where the rest of the property taxes are distributed. He felt this to be helpful information for the public to know.

Finance Director Dilles indicated that the percentages cities receive vary throughout the State. He stated that some cities receive no property taxes while others receive a larger percentage.

City Manager Tewes clarified that a forecast is not a prediction of what will happen. It is staff's best forecast of future trends based on current decisions. Staff provides the Council with forward looking forecasts because staff believes it is appropriate to keep an eye forward versus backwards as staff manages the City's finances. He felt it would be appropriate for the City to continue to look long term as it makes decisions as they would have future impacts. Should the assumptions outlined in the forecast turn out to be true, the City should start to see an operating surplus.

Council Member Sellers said that it is worth noting that as a rule, if you look back at the projections on an annual basis, virtually all projections have been conservative. He did not recall the Council being in a situation where it stated it was in the black and ended up in the red or that it thought it would be in the red by a small amount and ended up in the red by a much larger amount. He did not want the City to be in a position where it has unexpected deficits. He said that to the extent the City makes projections, it tries to be conservative so that the news tends to be good.

Action: *By consensus, the City Council Accepted and Filed the Report.*

6. DOG PARK FUNDING REQUEST

Mayor Kennedy indicated that the recommendation before the Council this evening is to approve the Parks & Recreation Commission's recommendation to appropriate \$20,000 from the Park Development fund to partially finance the construction of the off leash dog park improvements.

Mayor Kennedy opened the floor to public comment.

Rudolfo (no last name presented) stated that he does not oppose the dog park, but is concerned about the ducks and geese that can be found in the park. He requested that everyone work together to figure out a way to protect the wildlife, and yet accommodate a dog park. He requested that efforts be undertaken to inform the public as to what will be taking place at Community Park. He did not believe enough information is being shared with individuals to know the changes being proposed at Community Park. He noted that the pond has always been a feature at Community Park; attracting wildlife that are enjoyed by community members.

Mayor Kennedy suggested that a way be found to have the wildlife and dog park co-exist.

Nancy Dorger indicated that the Morgan Hill Dog Owners Group is not asking the City to remove the ducks and/or geese, but is requesting for funding that would allow fencing a section of the park that has already been set aside for the dog park.

No further comments were offered.

City Manager Tewes indicated that the Council held extensive public hearings and reviewed the Parks and Recreation Commission amendments to the Community Park Master Plan to provide for a dog park. The public hearings were held some time ago and that not everyone would know about the amendment to the Master Plan. He felt it appropriate for the City to continue to provide information to the community about the anticipated improvements at Community Park that include other improvements besides the dog park. He indicated that there will be construction at the tennis court, picnic pavilions, and modifications to the park. He indicated that Deputy Director of Public Works Struve can provide the speakers with additional details. He said that it would be appropriate for City staff to post renderings of the revised Community Park Master Plan at the park during the construction period so that individuals can see how the various elements of constructions will fit in with the overall Master Plan adopted by the Council.

Mayor Kennedy clarified that the action before the Council this evening is simply to allocate the funding; it is not taking action to proceed with the design of the dog park. He stated that there is still a lot of time to work on the issues such as the one raised this evening. He was sure City staff would look into the concern expressed this evening.

Council Member Tate stated that the Council has received input that suggested the expectation that should the Council allocate the \$20,000 the dog park would be constructed within a couple of months. He said that this would not be the case as the City does not have any final drawings or plans to proceed with a dog park. Further, there is no guarantee that the \$20,000 in addition to the money the dog owners group have already raised, would be enough to proceed with the dog park. He stated his support of the recommended action before the Council this evening, but wanted to make it clear that the action does not translate into the dog park being completed within the next couple of months.

Mayor Kennedy said that there are issues to be worked out such as who will be building and maintaining the dog park. Should City contracts and competitive bidding be used, it would typically cost more. Should the Council agree to make the appropriation, it would allow the process to move forward.

Action: *Council Member Tate made a motion, seconded by Council Member Sellers, to: 1) **Approve** Parks and Recreation Commission Recommendation to Appropriate \$20,000 from the Park Development Fund to Partially Finance the Construction of the Off-Leash Dog Park Improvements; and 2) **Increase** Appropriation from Park Impact Fund by \$20,000.*

Council Member Carr did not know if there was anyone present who attended the Parks & Recreation Commission meeting where this item was discussed. He noted that the recommendation by the Parks & Recreation Commission appears to state the Council should appropriate \$20,000. It was his recollection that the Council asked the Commission to take a look at where the \$20,000 would come from; advising the Council what should be done in the Capital Improvement Program to be able to appropriate the \$20,000. He noted that a source of funding was not recommended. Even though the Council will be moving forward with the recommended action, he recommended the Council request the Commission identify the funding source, and what project would not be completed as a result of appropriating the \$20,000.

Action: *Council Members Tate and Sellers **amended** their motion to include a **direction** that the Parks & Recreation Commission identify the funding source for the appropriation of the \$20,000 and identify which CIP project would not be completed as a result of this appropriation. The motion carried 4-0 with Mayor Pro Tempore Grzan absent.*

Redevelopment Agency Action

CONSENT CALENDAR:

Chairman Kennedy and Agency Member Tate requested that item 23 be removed from the Consent Calendar in order to allow comment on this item.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Redevelopment Agency Board, on a 4-0 vote with Vice-chairman Grzan absent, **Approved** Consent Calendar Item 22 as follows:*

22. JULY 2006 FINANCE AND INVESTMENT REPORT

Action: **Accepted** and **Filed** Report.

23. URBAN HOUSING COMMUNITIES (UHC) SENIOR HOUSING PROJECT

Business Assistance and Housing Services Director Toy presented the staff report, indicating that the item before the Agency Board would authorize the Executive Director to purchase a 2.7 acre site at 98 Central Avenue for the construction of a 49-unit low income senior rental housing project. The purchase price would be \$3.725 million and would accept the assignment of the purchase agreement from the developer, UHC. Further, the action would authorize the Executive Director to execute an exclusive right to negotiate agreement with UHC for a 12-month period on the disposition and development of the site. He indicated the Council considered this project at its July 26, 2006 meeting. At that time, the Agency Board directed staff to proceed with due diligence and bring back all items for Agency Board approval. He indicated that a 55-year regulatory agreement would be entered into between UHC and the Agency to ensure the project would remain an affordable senior housing project for low income senior citizens. He stated that staff recommends Agency Board approval pursuant to the City's affordable housing strategy.

Chairman Kennedy noted the Las Casas de San Pedro started off as a senior housing project and that it gradually began to be occupied by some senior residents. Once there was a certain percentage of senior residents, Las Cases de San Pedro could no longer be used as a senior housing project.

Mr. Toy said that the regulatory agreement restricts income levels and would stipulate that this is to remain a low income senior housing project for 55-years. Should the project be successful in receiving tax credits from state and federal government, investors will be able to purchase tax credits based on this being a senior project. Should the developer violate the restrictions, they would be required to repay all the tax credits which usually represents 50% of the total project costs. He felt there would be several mechanisms in place to ensure this remains a senior project for 55-year old citizens so that the City does not get into the same situation that occurred with the other project.

Agency Member Tate stated that he requested this item be removed from the consent calendar because it is unusual that the City would get into a property ownership for one year. It appears that this is a good purchase as the Agency would be purchasing at a price less than appraised. However, he felt there was a lot of risk in property ownership over the next year. He inquired whether staff has analyzed the risk return and whether this was an action previously taken by the Agency Board.

Mr. Toy responded that typically, the Agency would provide the financing to a developer with a non profit agency purchasing the land with a note tied to the land. In this case, staff decided to take an opposite approach. He indicated that UHC is a new developer to the City and that staff has not had the opportunity to work with them before. He stated that there is great uncertainty regarding the future financing sources and that under the perform, UHC assumes that some state program will be in place at the time they apply for financing. He said that state programs are contingent on a bond measure passing. Based on this uncertainty, staff felt that by the Agency controlling the property, the Agency would have more flexibility to determine what it would like to do with the property if there is a funding gap. Should UHC own the property and there is a funding gap, the City may be locked into providing the funding for a project the City may have allocated resources otherwise. He summarized by stating that staff recommends this approach based on the uncertainty/none familiarity with the developer, and allowing additional flexibility relating to future financing versus the Agency purchasing the land. He acknowledged that risk would be involved in this approach, but that staff felt the benefits of owning the land and flexibility outweighs any possible risks associated with the property.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Agency Member Sellers said that the Community & Economic Development Committee received a presentation from UHC. From the presentation, the Committee found that UHC is familiar with operating in this manner, and that they have an established track record throughout the State. These were the factors that added confidence as the Committee considered this project. He felt that staff took the right approach in placing the uncertainty portion on UHC and not the City.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board, on a 4-0 vote with Vice-chairman Grzan absent, **Authorized** the Executive Director to do Everything Necessary and Appropriate to: 1) **Purchase/Acquire** a 2.77 Acre Site at 98 East Central Avenue from Capogeannis Trust for \$3,725,000, Less UHC Deposits of \$75,000, Plus Closing/Escrow Costs Intended for Development as Affordable Housing, 2) **Accept** Assignment of Purchase Agreement for the site from UHC, and 3) **Execute** an Exclusive Right to Negotiate (ERN) Agreement Providing a 12 Month Period to Negotiate a Possible Disposition and Development Agreement with UHC to Develop the Site.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the City Council/Agency Board, on a 4-0 vote with Mayor Pro Tempore/Vice-chair Grzan absent, **Approved** Consent Calendar Items 24-25 as follows:*

24. JOINT SPECIAL AND REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY MEETING MINUTES FOR JULY 19, 2006

Action: **Approved** the Minutes as Submitted.

25. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL AND REGULAR REDEVELOPMENT AGENCY MEETING MINUTES FOR JULY 26, 2006

Action: **Approved** the Minutes as Submitted.

Redevelopment Agency Action

OTHER BUSINESS:

26. LEADERSHIP MORGAN HILL – 2006 CLASS PROJECT

Chairman Kennedy opened the floor to public comment.

Maureen Drowniany, representing the Morgan Hill Leadership Class of 2006, indicated that the Class' fundraising efforts have been successful and that they are able to purchase two pieces of public art. She presented renderings of the second statute entitled "Knowledge is Power" (boy on a globe) and the proposed plaques that would be installed with the two statues. She indicated that the Friends of the Library are also trying to purchase a bronze statue. Depending on whether theirs is ready to be installed will impact where the Class' second statue will be placed. She informed the Agency that the Class checked with the Centennial Committee to make sure it would be appropriate to mention the Centennial; indicating that President Tate was pleased to hear the City's Centennial would be referenced in the plaque. She requested Council approval.

No further comments were offered.

Mayor Kennedy indicated that the Leadership Morgan Hill Class of 2006 did a great job in selecting and pursuing this project. He thanked the Class for its efforts.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board, on a 4-0 vote with Vice-chair Grzan absent, **Accepted** the Second Public Art Piece Project, Location and Plaque for the New Library.*

City Council Action

PUBLIC HEARINGS:

27. HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 16215 CHURCH STREET

Director of Public Works Ashcraft presented the staff report on the request by the property owner for the ability to pay in lieu fees instead of undergrounding utilities at 16215 Church Street. He indicated that the frontage is only 50 feet and that staff concurred with the applicant that it would not be economically feasible to underground overhead utilities. He said that it is staff's belief that it would be more effective to accept the funds and construct the project at a later time. Should approved, the City would collect \$5,300 to be used in the future to underground utilities in the City.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Granted** Exemption to the Requirement to Underground Utilities with Payment of in Lieu Fees for the Proposed Development at 16215 Church Street.*

28. ZONING AMENDMENT, ZA-05-14/DEVELOPMENT AGREEMENT, DA-05-13: JARVIS-SOUTH VALLEY DEVELOPERS – Ordinance No. 1790 & 1791, New Series

Senior Planner Tolentino presented the staff report on the proposed Madrone Plaza multi family project consisting of 229 units; a joint venture development between South Valley Developers and South County Housing. She indicated the Council is considering the approval of a precise development plan, a Planned Unit Development (PUD) zoning designation, approval of the project development agreement, and the adoption of the environmental document for the project; specifically the mitigated negative declaration and the mitigation and monitoring program. She indicated that South Valley Developers would develop the western portion of the project and will include 134 units. The eastern portion would be development by South County Housing and will include 95 townhomes with modified setback dwellings. She addressed the affordability portion of the project and the open space area. She informed the City Council that the Planning Commission unanimously recommends approval of the PUD, development agreement, the mitigated negative declaration, and the mitigation monitoring and reporting program. She stated that Jarvis would be right turns only onto Monterey Road, and that the project will not impact the railroad tracks.

Council Member Sellers indicated that the proposed 40-foot building height is not typical for this area. He noted the height in the downtown area is at 42 feet and therefore, the 40 foot height is not unusual for the City.

Council Member Tate said that site plans were not included in the Council's packets that would depict the location of the 40-foot building heights and modified setbacks. He wanted to make sure the City is not granting cart blanch that would create a box of 40 foot high structures during the design review process.

Ms. Tolentino informed the Council that the 40 foot building height is proposed for almost all buildings in the South Valley Developer's portion of the project. She clarified that two story elements are being proposed at the ends of the buildings to provide a stepping affect. Therefore, the buildings would not go straight up in 40 feet. South County Housing's townhomes will also have 40 foot structures with modified setbacks, and that the modified setback dwellings would only be two stories in height.

Mayor Kennedy opened the public hearing.

Scott Schilling stated his support of the development agreement and the zoning as proposed this evening. He indicated that he spent a lot of time, this past year, in working on a project design and to create a living environment that provides high density housing, while providing a private living area. He stated that he visited several similar projects with similar densities throughout the state. He presented renderings of a six-unit row house; indicating that the center section raises the living environment by ½ story. Therefore, the living area is raised up above the walkway pathways and provides greater privacy to the living environment. He indicated that the roofline is at 40 feet with a lot of relief; while maintaining the density and height. He stated that two car garages are proposed to the rear of the buildings, connecting to each individual unit.

Council Member Carr inquired how the height and design would relate to the Cochrane Village residential project.

Mr. Schilling said it was his belief that the Cochrane Village project was designed to be 2-2½ stories and that the project may have 3 story elements popping up occasional. He clarified the height of the buildings would be higher in the middle section of the units because the project provides 3 story units. Therefore, the project may be ½ story higher with this building. However, he tried to provide relief by dropping the height at the end of the units with additional roof elements. Therefore, each building would have the step down feel at the end of the unit. He noted the project only has two units close to the Cochrane Village project. The project provides open space, club house, and driveways to buffer this project with the Cochrane Village. He said the project would not create a walling off of the project to Cochrane Village as there are very few units directly adjacent to Cochrane Village.

Mayor Kennedy said that this was an issue raised with one of Mr. Dick Oliver's last projects. It was requested that Mr. Oliver's project be feathered in order to blend in with an adjacent structure.

Mr. Schilling said that softening at the ends of the building as well as the distance between the buildings should tie in nicely between the two buildings. He indicated that a significant greenbelt is proposed along Monterey Road and Cochrane Road. He stated that the berm and the setback on Cochrane Road would be maintained continuously along Cochrane and Monterey Roads with very nice landscaped setbacks before you get to the buildings. He informed the Council that pathways along Cochrane Road are proposed and that there would be a warm feeling along Monterey and Cochrane Road as front porches would be facing the streets with greater setbacks. Individuals driving this street corridor would not be looking into any garages.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Adopted** the Mitigated Negative Declaration and the Mitigation Monitoring & Reporting Program.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the First and Second Reading of Ordinance No. 1790, New Series (Zoning Amendment).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1790, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE ESTABLISHMENT OF AN R3/PLANNED UNIT DEVELOPMENT ZONE AND A PRECISE DEVELOPMENT PLAN FOR A 229-UNIT MULTI-FAMILY PROJECT LOCATED ON A 15.8-ACRE SITE AT THE SOUTHEAST CORNER OF COCHRANE ROAD AND MONTEREY ROAD (APNs 726-25-076 & -077)/(ZA-05-14: Jarvis–South Valley Developers) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.***

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the First and Second Reading of Ordinance No. 1791, New Series (Development Agreement).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1791, New Series by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-22: JARVIS – SOUTH VALLEY DEVELOPERS (APNs 726-25-076 & -077) (DA-05-13: Jarvis–South Valley Developers) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Grzan.***

29. DEVELOPMENT AGREEMENT APPLICATION, DA-06-03: JARVIS-SOUTH COUNTY HOUSING – Ordinance No. 1792, New Series

Senior Planner Tolentino presented the staff report on the development agreement for the 95-unit portion of the Madrone Plaza Project with South County Housing.

Mayor Kennedy opened the public hearing.

Nancy Wright, Project Manager, South County Housing, said that the project picked up the amenities proposed by South Valley Developers. This portion of the project will reflect South County Housing's architecture, site plan; and yet have its own style a little. She presented renderings on a different elevation just completed on Watsonville Road with the Viali project. She indicated that this project proposes greater setbacks than the Viali project. This project will have a craftsman look with a Tuscan-

Mediterranean approach. She stated that she is pleased with the product to be built. She indicated that South County Housing took a different approach with the attached units and that this product is new to South County Housing. She said that they have raised the center paseos so that the ridgelines are at 35'7.5" from grade to the ridgeline because they have raised the paseos. It is the other side that you get the feel for the three stories. She said that the front story has a 2.5 story feel and that the 3-story portion of the building will have the driveway. She indicated that the market is new to the 3-story townhome concept in Morgan Hill. However, these are being designed and built throughout Santa Clara County.

Scott Schilling indicated that 15 units per acre are proposed for this project.

Ms. Wright informed the Council that a lot of green space and recreational amenities are being proposed. She stated that the Planning Commission pointed out the modified setback expires for building permits issued after June 2007. Therefore, all 26 townhome units need to have building permits issued before June 30, 2007.

Mayor Kennedy did not believe the project gives a dense appearance.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, **Waived** the Reading in Full of Ordinance No. 1792, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1792, New Series by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-05-02: JARVIS – SOUTH COUNTY HOUSING (APNs 726-25-076 & -077) (DA-06-03: JARVIS – SOUTH COUNTY HOUSING)** by the following roll call vote: **AYES:** Carr, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

City Council Action

OTHER BUSINESS:

30. MANAGEMENT AUDIT OF DEVELOPMENT PROCESSING SERVICES

City Manager Tewes indicated that approximately 4-5 years ago, the City conducted a management audit of all of the City's development processing services of the Planning, Building and Engineering Divisions with a view toward improving the effectiveness and efficiency of the services being delivered. As part of the adopted workplan, the Council asked staff to again review some of these issues, but to focus on the impact on the development services on the customers (looking at development services from a customer's point of view. He said that staff asked Joe Colgan, Joe Colgan & Associates, who conducted the first study, to return and review all issues again from the perspective of customer services.

He requested that the Council identify the items of particular interest at the conclusion of Mr. Colgan's presentation. Further, that the Council direct staff to review the recommendation and return with an implementation plan.

Joe Colgan addressed the purpose of the study: to review the recommendations of the 2002 study and to look at to what extent they have been implemented. He indicated that he conducted interviews with customers to receive their feedback on the development processing services in order to identify issues and to make recommendations. He addressed the status of the recommendations of the 2002 study; indicating that many of the recommendations were fully implemented. He indicated that some recommendations are still in process such as 1) the one stop permit center that needs to await until the library is completed so that the former library building can be converted. 2) Updating the Design Review Handbook has been included in the current year budget. 3) Review some of the regulations. He indicated that some of these recommendations were deferred because funding was not available such as in acquiring the Tidemark system for engineering. However, he noted that the Tidemark System has been acquired for Planning since the 2002 study was completed. Integrating Tidemark is an expensive item and has been deferred. He said that there are some recommendations that need more attention and that he would address these as he goes along.

Mr. Colgan informed the Council that he invited 35 customers with various types of experience with the City. Of these 35 customers, 16 individuals responded and were interviewed and that it was a good mix that included residential and commercial developers, architects, real estate brokers, business owners, members of the Chamber of Commerce, the Economic Development Committee and the Downtown Association. He informed the Council that he made the effort to include individuals who have not been completely happy with City services in order to receive their feedback as it is important. He said that there was a concern expressed about the City's image as a good place to do business and being friendly to business.

Mr. Colgan stated that in general, customer satisfaction was positive for professional developers and who understand the process. These individuals were complementary of the process and staff. Where there was a less positive response was from smaller business owners and others who do not work with city processes all of the time. These individuals are surprised by how complex and costly it is to get through the process as well as how much time it takes.

Mr. Colgan addressed concerns expressed by the City's customers relating to the development process: inadequate customer information, the processing takes too long, poor coordination between departments, items get added late in the process and new conditions identified. He informed the Council that these issues are typical of customers if you ask them about their concerns of the development review process. He stated that just because customers make these complaints, does not mean they reflect accurately what has happened in the process. He indicated that there were 3 regulatory issues were raised in the previous study and that he would have comments/suggestions for possibly streamlining the process in these areas. He clarified that he would not be suggesting policy recommendations, but merely suggesting that there may be some alternatives the Council could look at.

Mr. Colgan suggested alternatives for Council consideration: 1) improve city image by taking an active role in defining its image by hiring a public relations firm and/or preparing press releases, arranging

interviews with some of the developers, as the City has a lot of success stories. He indicated that he has received positive comments regarding the City Council and City Manager. 2) Reconsider some regulations such as: alternatives to city-initiated PUD zoning in order to streamline/speed up the process; single tentative map for an entire residential project instead of separate tentative map for each allotment under Measure C, if feasible.

City Manager Tewes said that it is his hope that the Council receives Mr. Colgan's observations and recommendations. Staff would return to the Council at a later date with a specific plan for implementation. He noted that this evening, under agenda item 7, the Council adopted a new policy relating to tentative maps and that the City had some recent success in publicizing successful projects such as what appeared in the San Jose Mercury News relating to Venture Corporation and their projects. The Associated Press has picked up the Council's approval of the American Institute of Mathematics and that this has been on the front page of newspapers all over the country.

Mr. Colgan informed the Council that he has heard a number of positive comments from developers who state that the ARB goes out of their way to keep projects moving and avoid delays within the limits of what they are required to do. Therefore, this is not intended to be a criticism of the ARB. 3) He indicated that a lot of cities allow small projects to go through administrative site review. He noted that Morgan Hill requires ARB review for almost all projects with the exception of a single family residence. He said that there are cases where projects need to go to the ARB, followed by review by the Planning Commission and/or City Council for approval. He suggested that it might be worth considering whether or not the site review could be combined with Planning Commission and/or City Council action to save a step/few weeks in the process. This would be a possible streamlining suggestion. Implement performance measurement in the development review process. He noted that Planning is currently updating the Tidemark system, indicating that this system was not configured precisely to do everything Planning staff wanted to do and is not capable of conducting all performance measures that was recommended in the 2002 study. However, planning staff is working on this and that within a couple of months, they will have the system upgraded and will be able to conduct performance measures. 5) Improve performance standards and performance measurements. He said that it may not be necessary to be formal about how the City deals with this as a small city. In a large organization, he said that it was almost impossible to know what is taking place in the process where you have hundreds of projects being processed at the same time. He felt that you need to have an automated system to track all projects, provide statistics and to capture the data so that you know what is going on. He said that Morgan Hill is a small enough organization where a lot of the information is conducted informally. He felt that this can be improved by using the system to capture more information and provide statistics on how often the City meets review time target, how many times items need to be reviewed before receiving approval, etc. He said that there is a question as to whether the cost benefit is positive.

Mayor Kennedy said that he served on the permit streamlining committee approximately 7 years ago. He said that most other cities have adopted Tidemark and that this system has improved their processing. He noted that the City implemented the Tidemark System approximately 5 years ago. He said that staff would respond to the question as to why it has not been implemented it.

Mr. Colgan clarified that planning and building divisions are using Tidemark, but needs some upgrades. He noted that public works engineering does not have the system yet. 4) He stated that the one stop permit center would be a good tool to implement, would improve the development process, would make communication much easier, and would go a long way to smooth items that may crop up now and again. 5) He felt it important for the City to provide better customer information, especially for the inexperienced applicant. He recommended that the City provide better written general information to the general public upfront; update existing information; provide customer service policies that are given to the applicant, including who the applicant can go to in order to get a disagreement resolved or to get a second opinion. Further, provide process descriptions, steps, schedules, and the departments to be involved. Better information should be provided upfront, in writing. 7) The City needs to consider how important it is to be competitive on impact fees. He understands the City compares its fees periodically with other cities. He noted that the street impact fees are customized for each project. Some other cities implement flat fee schedules that have their advantages and disadvantages. Flat fees tend to smooth out the highs and lows; averaging the fees for all commercial/industrial development within a smaller range. This may eliminate some of the higher fees. He said that he heard that the impact fees for restaurant were high and may be discouraging this type of development. He noted that an impact fee schedule being made available to the public. He recommended that the City make fee estimate sheets be simplified and made more user friendly. He noted that the current sheet estimates includes slots for different types of development and includes extraneous information that may be confusing. 8) Regarding the processing fees, he recommended the City consider adjusting fees that seem unreasonable from the customer perspective relative to the benefit they would be receiving, even though the fees are based on the actual cost of providing services. He indicated that an individual suggested the City consider refunding fees for successful appeals.

Mayor Kennedy felt that a pre application fee may be a deterrent to receiving an early information from City staff on a project in the design process.

Mr. Colgan felt that staff would intend to agree with Mayor Kennedy's comment. However, there is staff time involved with a more thorough review early in the process and costs involved. Therefore, this would be a balancing act.

Council Member Carr said that this will be a good tool to use as the City moves forward. He noted that in the customer feedback, most individuals involved in the development process are pleased with the process. He noted that Mr. Colgan mentioned in his report that the City has a way of seeking feedback from customers. However, he could not find in the report the percentage of returns responses.

Mr. Colgan said that the responses were a small percentage. He felt that the City received approximately 22 responses over a three year period. He noted that the feedback form goes out with approval letters by the planning division. He did not believe that projects that are denied are provided with a form letter. He did not know if this skews the results. He did not believe that engineering sends out feedback forms. He said that the City could conduct period surveys. He said that should a city send out a few hundred survey forms, approximately 15-20% individuals would response, with most responses being positive in nature.

Council Member Carr noted that Mr. Colgan commented that larger projects are submitted by individuals who are involved in the City process more often and had the best reviews of the process. However, the small projects that are new to the development process were the ones that had issues. He said that these issues were attributed to the fact that they did not understand things or misrepresented some things. He wanted to make sure that City staff is not spending more time with individuals who understand the City's system or have bigger names and the City is not spending the same amount of time with smaller projects or new individuals. He suggested that City staff should be spending more time to small projects/individuals new to the development process.

Mr. Colgan felt that City staff needs to spend time with developers with big project as they may have complicated projects. He noted that City fees are based on the size of the project. Although he understands what Council Member Carr is stating, he felt by providing better customer information up front, the City could alleviate some of Council Member Carr's concerns. He said that City staff could conduct a lot of hand holding with the inexperience applicant that it could be a black hole. He stated that there is may be a limit on how much time you can spend with individuals. He felt that there were ways to improve experiences without completely absorbing all of staff time. He said that larger cities such as San Jose and San Diego have staff members on board who specialize on different types of projects. He did not believe that you can treat experience developers and new/smaller developers with small staff.

Council Member Sellers said that a lot of what he would like to address will be addressed at the Community & Economic Development Committee level, should the Council concur with staff recommended action. He said that an issue relates to balancing economic development and cost recovery as well as to staffing levels. He said that he would like to receive more elaboration on size relative to numbers of larger/continuation project. He noted that the City receives consistently new residential development and the City has a consistent number of developers who return year after year partly because of the City's growth control initiative and other things. He said that it could be that individuals are becoming familiar with the development process and it is easier to go through this process. He said that he wanted to get a sense of the relative number of projects (e.g., is planning staff workload at 98% of experienced developers and 2% new developers). He noted the City would not be having this growth level for ever. He felt that Mr. Colgan has given the Council several options in terms of customers and clarifying the brochures such that individuals know what they are receiving going into the process and having a clear sense of this. He said that he provide a preview of what he would like to hear more about at the subcommittee level in order to return with recommendations for Council consideration. He said that the Council will need to wrestle between the balance between economic development and encouraging commercial development; and cost recovery.

Mayor Kennedy felt that some of the goals and objectives presented this evening could be accomplished without a lot of effort. He recommended that some focus be given to improving the City's image such as press releases/success stories which are at minimal effort. Further, there be focus placed in addressing inexperience/first time developer and assisting them in getting through the development process. He recommended that focus be given to the establishment of a one stop permit center for small projects and a one stop permit center for larger projects. Regarding the comment about combining some of the steps in the ARB and Planning Commission reviews, he felt that this would be another area that would streamline the process.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent: 1) **Considered** the Presentation of the Development Processing Services/Customer Service Study by Joe Colgan; and 2) **Directed** the City Manager to Prepare an Implementation Plan for Review by the Community and Economic Development Committee and Subsequent Adoption by the Council.*

31. UPDATE ON OLIN PERCHLORATE CONTAMINATION AND PRESENTATION TO REGIONAL WATER QUALITY CONTROL BOARD (RWQCB) AT THEIR SEPTEMBER 7, 2006 MEETING

Director of Public Works Ashcraft presented an update on the perchlorate contamination in the City's groundwater basin. He indicated that the two big issues the City would like to bring to the attention to the Regional Water Quality Control Board at their next meeting in September 2006 are: 1) that they name Olin as the discharger relative to the northeast contamination. He informed the Council that staff appeared before the Board on May 12 and received a lot of support. However, they could not make the determination at that time. He said that staff will point additional items that the Board can get pass some of the issues. 2) On June 30, 2006, Olin submitted their basin cleanup feasibility study. Olin is suggesting what they would do to ultimately to clean up the basin, and what contamination level they should for. He said that staff was amazed when Olin stated that it was their belief that 11 parts per billion of perchlorate was their right to leave in the basin. Staff had once thought Olin would ask for 6 parts per billion, the current action level at the State. He informed the Council that many groups will be appearing before the Regional Board at their next meeting to be held on September 7, 2006 in Monterey on this issue. He said that County cities and the Water District will be making presentations at this meeting; stating how far off the mark Olin's report was and suggest that the report be rejected. He informed the Council that the City would be making similar remarks with the main emphasis being to remind the Board of the prior evidence as well as the new evidence that has been submitted within the last 30-60 days that clearly shows that there is communication between the aquifer of the City's northeast wells and those sites. Further, that there is direction of ground water flow of perchlorate concentrations above the current threshold of delineation of 4 parts per billion that has been used on the southern plume for delineation and a delineation of 4 parts per billion for the northeasterly plume. He said that staff knows that there is perchlorate of 4 parts per billion 3,000 feet north from the site. He stated that City staff has been clear and consistent in its message to the Regional Board staff and the Regional Board. He indicated that at the last city presentation of May 12, 2006, the Board seemed to be motivated to ask their staff why they could not make some of the findings requested by the City of Morgan Hill. However, it was the Regional Board's attorney backing up their staff by stating that they did not have enough documentation. With three more months of documentation, staff believes there should be sufficient documentation to be able to make the finding. He requested Council support City staff presence before the Regional Board at the September 7, 2007 meeting.

City Manager Tewes distributed a document previously sent to the Council. He stated that City staff sent a letter last week to the Regional Board alerting them that the City of Morgan Hill would be appearing at the meeting scheduled for September 7, 2006. Staff would be outlining some of the City's concerns. He stated that there are two issues of concern to the City: 1) the particular regulatory approach taken by the Regional Board. He stated that City staff will be asking the Regional Board to name Olin as the discharger for the entire basin that has been impacted by perchlorate. He said that to date, the Board has resisted making this determination and has issued a comprehensive cleanup and abatement order only for that portion of the basin south of Tennant Avenue. He said that this leads to a lot of odd presentations by Olin. He said that Olin submits exhibits that suggest that there is a lot of perchlorate, but does not know what is occurring north of Tennant Avenue. He said that staff believes there is one basin and one major source of perchlorate. It is staff's belief that the responsible party for the contamination should be subject to a comprehensive cleanup and abatement order. He said that City staff was making progress with the Regional Board. However, the Board received suggestions from its staff and legal counsel that it may be inappropriate to make that determination at that time. Therefore, the Regional Board scheduled a specific item for September 7, 2006 and that this be the opportunity for them to again review this question. He informed the Council that staff submitted the letter distributed to the Council this evening to alert the Regional Board staff as to the City of Morgan Hill's request will be. He indicated that City staff has not yet seen the Regional Board's staff report or recommendation. It is City staff's hope that it has been persuasive and that the Regional Board staff will recommend adoption of the City of Morgan Hill's view.

City Manager said that the second issue relates to what Olin will do pursuant to a cleanup and abatement order. For the area south of Tennant Avenue, Olin has submitted a cleanup feasibility report. He stated that City staff has a lot of concerns about the quality of this report. He said that it is City staff's concern that Olin has missed the mark in its entirety. He stated that State law provides that it is the responsibility of the discharger to cleanup the groundwater basin to background levels. If the polluter placed the perchlorate in the groundwater, the polluter is required to remove it from the groundwater down to a level of background; the level in place historically and unrelated to man made pollution. He said that Olin's cleanup feasibility study sets wrong/bad standards, but never identified the background level. Olin states that it assumes that any perchlorate in the basin at less than 4 parts per billion is part of background. He indicated that Olin's reports shows that there are lower levels of perchlorate attributed to Olin's actions. It is staff's view that the Regional Board must hold Olin's feet to the fire, hold them accountable and clean up to background levels. He stated that one of the factors the City insisted upon is that Olin be directed not just to find out whether groundwater flows in one direction or another, but to test the groundwater for the presence of perchlorate. He noted that Olin's own studies have demonstrated that there is perchlorate in the deep aquifers that supplies the City's drinking water and that it is Olin's contamination of perchlorate. He stated that this is the kind of evidence City staff will present to the Regional Board to bolster the City's view that the cleanup and feasibility study needs to meet all of the State standards. He indicated that Olin has presented several alternative theories as to alternate sources of perchlorate contamination. They suggest that it may come from fireworks, disinfection practices of farming activities, or disinfecting wells. He stated that Olin neglects to indicate that it used over 150,000 tons of perchlorate on their site each and every year for their flare manufacturing facility at Tennant and Railroad Avenues.

Mayor Kennedy said that in addition to City Manager Tewes and Public Works Director Ashcraft attending the September 7 meeting, he would try to change his schedule in order to attend this meeting as well, missing a day and a half of the League of California Cities annual conference. He felt that it would be helpful if he attended the Regional Board meeting and make some comments as well. He would expect the City Manager and the Public Works Director and the City's consultants would present the bulk of the technical points that need to be made.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent: 1) **Considered** Staff Update and 2) **Authorized** the City Manager and the Mayor to Make a Presentation to the RWQCB at Their September 7, 2006 Meeting in Monterey, Urging the Board to Hold Olin Accountable for the Northeast Contamination.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:12 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY